

UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MASSACHUSETTS

GERALDINE FAVALORO, for herself and on	)	
behalf of all others similarly situated,	)	Case No. 05-11594 RCL
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
PRESIDENT AND FELLOWS OF HARVARD	)	
COLLEGE, BAYVIEW CREMATORY, LLC,	)	
a New Hampshire Limited Liability Company	)	
LINDA STOKES, Trustee of the Dekes Realty	)	
Trust of 107 South Broadway, Lawrence,	)	
Massachusetts, and JOHN J. GENTILE	)	
	)	
Defendants	)	

**PRESIDENT AND FELLOWS OF HARVARD COLLEGE’S OPPOSITION TO  
PLAINTIFF’S MOTION FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE**

Defendant, the President and Fellows of Harvard College (“Harvard”), opposes plaintiff’s motion for the same reasons articulated by defendants Bayview Crematory, LLC and Linda Stokes, Trustee. Allowing plaintiff to dismiss without prejudice her claims against Bayview and Stokes will effectively circumvent the Court’s October 17, 2006 Order denying entry of a separate and final judgment under Rule 54(b). In its denial, the Court held that “a primary concern of appellate courts regarding piecemeal appeals persists as a substantial problem in this case notwithstanding the grounds on which the court has dismissed the claims against [Harvard and Gentile].”

By denying the request for a separate and final judgment under Rule 54(b), the Court heeded the First Circuit’s warning to avoid “the scattershot disposition of litigation.” *See Spiegel v. Trustees of Tufts College*, 843 F.2d 38, 42 (1st Cir. 1988); *see also, Nichols v. Cadle*, 101 F.3d 1448, 1449 (1st Cir. 1996) (“piecemeal appellate review invites mischief”). The

Court's October 17th Order reflects the premise that plaintiff's claims against Bayview and Stokes should be determined before an appeal of the dismissal of Harvard. The instant motion is nothing more than a last ditch maneuver to avoid this Court's October 17th Order.

Harvard respectfully requests that the Court deny plaintiff's motion for voluntary dismissal without prejudice.

Respectfully submitted,

PRESIDENT AND FELLOWS OF HARVARD  
COLLEGE

By: /s/ Melissa L. Nott

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Date: November 17, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic filing (NEF) and paper copies will be sent to those indicated as non registered participants on November 17, 2006.

/s/ Melissa L. Nott

Melissa L. Nott